

Executive Order 13186 of January 10, 2001

Responsibilities of Federal Agencies To Protect Migratory Birds

Overview

The Executive Order directs each Federal agency taking actions having or likely to have a negative impact on migratory bird populations to work with the U.S. Fish and Wildlife Service to develop an agreement to conserve those birds. The protocols developed by this consultation are intended to guide future agency regulatory actions and policy decisions; renewal of permits, contracts or other agreements; and the creation of or revisions to land management plans. In addition to avoiding or minimizing impacts to migratory bird populations, agencies will be expected to take reasonable steps that include restoring and enhancing habitat, preventing or abating pollution affecting birds, and incorporating migratory bird conservation into agency planning processes whenever possible.

Most bird species in the United States are protected by the Migratory Bird Treaty Act of 1918, the domestic law that implements the United States' commitment to four international conventions for the protection of shared migratory bird resources. The Migratory Bird Treaty Act (MBTA) protects species or families of birds that live, reproduce or migrate within or across international borders at some point during their annual life cycle. Federal courts have affirmed that Federal agencies are subject to the MBTA's prohibitions on "take" of migratory birds. The Executive Order is designed to assist Federal agencies in their efforts to comply with the MBTA, and does not constitute any legal authorization to take migratory birds or otherwise supercede the MBTA's requirements. The MBTA requires Federal agencies to have regulatory authorization from the Service before taking migratory birds.

As directed by the Executive Order, within 2 years each Federal agency taking actions that are having, or likely to have, a measurable negative impact on migratory bird populations must develop and implement a Memorandum of Understanding (MOU) with the Fish and Wildlife Service for the conservation of migratory birds. The Service, in cooperation with these agencies, will develop a schedule for completion of these MOUs that gives priority to agencies having the greatest impacts on migratory birds.

In addition to requiring consultation with the Service and consideration of migratory bird conservation for agency actions, the Executive Order also:

- Establishes a Council for the Conservation of Migratory Birds to assist agencies in implementing the order. Composed of administrators from the Departments of the Interior, State, Commerce, Agriculture, Transportation, Defense and the Environmental Protection Agency, the council will also serve as a clearinghouse to share the latest migratory bird information with Federal agencies.

- Directs agencies to ensure that environmental analyses of proposed Federal actions required by the National Environmental Policy Act evaluate the effects of those actions on migratory birds.
- Requires agencies, within the scope of their regular activities, to control the spread and establishment in the wild of exotic animals and plants that may harm migratory birds and their habitat.
- Requires agencies to provide advance notice of any action that may result in the take of migratory birds, or to report annually to the Service on the numbers of each species taken during the conduct of any agency action. Agencies are directed to avoid the take of any species identified by the Service as being of particular concern, and to consult with the Service to set out guidelines for any actions resulting in take.

GSA Responsibilities

On June 28, 2001, a meeting was held with 22 Federal agencies that the Service determined affected by the Executive Order. GSA was not included in the meeting and the Service subsequently determined that GSA is an “independent establishment” so participation in the MOU process is “voluntary”. However the Service would still like to work with GSA to better conserve birds through an MOU.

The Executive Order defines “Federal agency” as an executive department or agency, but does not include independent establishments as defined by 5 U.S.C. 104.

Section 104 of 5 U.S.C. “independent establishment” means—

- (1) an establishment in the executive branch (other than the United States Postal Service or the Postal Rate Commission) which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment; and
- (2) the General Accounting Office.

Whether or not GSA executes an MOU with the Fish and Wildlife Service, under the National Environmental Policy Act, GSA has the responsibility to evaluate Federal actions on migratory birds and act accordingly.